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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1920 OF 2007

Shri Sanjay Atmaram Gawade ... Petitioner

Versus

State of Maharashtra and Ors. ... Respondents

Mr. A.M. Joshi for Petitioner.

Mr. P.I. Khemani, A.G.P. for R. No. 1.

Mr. R.G. Ketkar for R.No. 2.

Mr. Kisan Sonwalkar for R. No. 3.

CORAM: F.I. REBELLO &
R.M. SAVANT,JJ.
DATED: APRIL 09, 2007

P.C.:

. The Petitioner is in service of Respondent No. 2. The Resplendent No. 2 invited applications for the post of Ward Officer. The Petitioner along with Respondent No. 3 and some others submitted applications. The Selection committee was constituted. The Selection Committee selected Respondent No. 3 and placed the Petitioner in the list of wait listed candidate. Under Section 53 of the Bombay Provincial Municipal Corporation Rules, 1949, the appointing authority for the post is municipal Corporation. The Corporation by the resolution decided to recommend the appointment of Petitioner and not Respondent No. 3. The Commissioner made a report to the state Government

which exercised their powers under Section 451 of the Act. In terms of the order, resolution purportedly appears to have been set aside. However, the latter part of the communication to the Commissioner, would indicate that they were called upon to submit their say as contemplated by the provisions of the Act. Subsequent to that order of the State Government, Respondent No. 3 was offered appointment and Respondent No. 3 has since joined the services.

. At the hearing of this petition, on behalf of the Petitioner, the learned counsel has raised the following issues :

(1) that it was open to the appointing authority , in the instant case, Corporation, to have passed the resolution considering Chapter 3 of the Schedule to the Act.

(2) It was not open to the State Government to have set aside the resolution without giving opportunity as contemplated under Section 451.

. We have heard the learned counsel for the parties. Though the terminology of the Government resolution appears to have used expression "set aside", in fact by giving opportunity, the real

intention appears to be that the resolution of the Corporation has been suspended. It is only in that event, opportunity can be given as required under Section 451(2).

. Considering the above, in our opinion, if the Corporation or the Commissioner has filed any objection, the State Government to consider the same and thereafter act according to law. We make it clear that at this stage, we are not interfering with the appointment of Respondent No. 3 and the appointment will be subject to the final order passed by the State Government.

. With the above observations, Petition stands disposed of.

(R.M. SAVANT,J.) **(F.I.REBELLO, J.)**